

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES ROGERS and U.S. POSTAL SERVICE,
POST OFFICE, Hope, AR

*Docket No. 00-1616; Submitted on the Record;
Issued June 1, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has met his burden of proof in establishing a recurrence of disability on October 15, 1999 causally related to his March 30, 1998 employment injury; and (2) whether appellant has established that he sustained a consequential injury as a result of his March 30, 1998 employment injury.

Appellant, a 47-year-old city carrier, filed a notice of traumatic injury on March 30, 1998 alleging that he fractured his left tibia while in the performance of duty on March 27, 1998. The Office of Workers' Compensation Programs accepted appellant's claim for internal derangement of the right knee on May 6, 1998.¹

Appellant returned to limited-duty work on October 13, 1999. On October 28, 1999 appellant filed a notice of recurrence of disability alleging that his left knee was still swollen and bruised. By decision dated December 16, 1999, the Office denied appellant's claim for recurrence of disability and consequential injury.² Appellant requested reconsideration on December 21, 1999. By decision dated January 13, 2000, the Office denied modification of its December 16, 1999 decision.³

The Board finds that appellant failed to meet his burden of proof in establishing a recurrence of disability on October 15, 1999 causally related to his March 27, 1998 employment injury.

¹ The Office later corrected its acceptance to the left knee for which it authorized surgery on August 10, 1998.

² Appellant filed a notice of occupational disease on December 8, 1999 alleging that he had developed an emotional condition due to factors of his federal employment. The Office has not issued a final decision addressing this claim and the Board will not address this issue on appeal. 20 C.F.R. § 501.2(c).

³ Following the Office's January 13, 2000 decision, appellant submitted additional new evidence. As the Office did not review this evidence in reaching a final decision, the Board will not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a limited- or light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁴

The employing establishment offered appellant a limited-duty position as a modified distribution clerk on September 16, 1999. The position required lifting up to 50 pounds intermittently, sitting and standing intermittently for 4 hours a day each as well as intermittent bending, twisting and squatting.

On October 1, 1999 Dr. Chris C. Alkire, a Board-certified orthopedic surgeon and appellant's attending physician, reviewed the job description and stated that appellant could perform the duties of the offered position. He informed appellant that he believed that appellant could perform the duties of cleaning and driving on October 7, 1999. Appellant accepted the offered position on October 13, 1999.

Appellant filed the notice of recurrence of disability on October 28, 1999 alleging on October 15, 1999 he stopped work due to increased pain in his knee caused by mopping. He also stated, "Bending and stooping to load and unload placed undue stress on an already injured knee." In a narrative statement, appellant stated that on October 15, 1999 he was unloading boxes and his knee gave way and he fell on his left knee and elbow.

In a work release note dated October 21, 1999, Dr. Alkire stated that appellant should work sit-down duty only for three weeks. In a treatment note of the same date, he stated that appellant's knee gave way while he was unloading some mail in the back of a truck. Dr. Alkire stated that appellant sustained a contusion to his left knee with no effusion and minimal ecchymosis across the anteromedial aspect of the knee. Appellant also sustained a superficial abrasion to the left elbow. He repeated that appellant required purely sedentary work for three weeks.

Dr. Alkire completed a note on November 11, 1999 and stated that appellant's knee condition was "just a somatic presentation of stress and anxiety." He released appellant to return to his light-duty position.

The medical evidence from Dr. Alkire does not address a change in the nature and extent of appellant's left knee condition. He noted that appellant had a contusion due to his fall but did not support total disability due to this condition. Appellant further attributed appellant's knee condition to stress. As he has not established a recurrence of total disability due to a change in the nature and extent of his injury-related condition, the Office properly denied his claim for recurrence of disability.

⁴ *Terry R. Hedman*, 38 ECAB 222 (1986).

The Board further finds that the case is not in posture for decision regarding the consequential injury.

It is an accepted principle of worker's compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. As is noted by *Larson* in his treatise on workers' compensation, once the work-connected character of any injury has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause and so long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable under the circumstances.⁵

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁶

Following the Office's December 16, 1999 decision denying appellant's claim for recurrence, appellant requested reconsideration and submitted additional medical evidence. He submitted a report dated December 3, 1999 from Dr. William E. Coopwood, a Board-certified psychiatrist, who noted appellant's assertion that he was experiencing job-related stress due to not being able to work because of his physical condition. He also stated that appellant was experiencing stress from his supervisors at work. Dr. Coopwood recommended that appellant be retrained for another position.

Dr. Alkire completed a note on November 11, 1999 and stated that appellant's knee condition was "just a somatic presentation of stress and anxiety." He released appellant to return to his light-duty position.

On December 30, 1999 Dr. Alkire stated that he treated appellant for knee problems as well as anxiety and stress related to his job. He stated that appellant should retire based on his mental disease. In a note of that date, Dr. Alkire stated that appellant had a mental breakdown, was hospitalized and was not planning to return to the employing establishment.

In this case, appellant has identified a compensable factor of employment, his accepted left knee injury as causing or contributing to his emotional condition. He has also submitted medical evidence from Dr. Coopwood attributing his emotional condition to his employment

⁵ *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994).

⁶ *Lillian Cutler*, 28 ECAB 125, 129-131 (1976).

injury. This report contains a diagnosis and an opinion that appellant's condition was exacerbated by the accepted employment injury. While these reports are not sufficient to meet appellant's burden of proof, they do raise an uncontroverted inference of causal relation between appellant's accepted employment injury and his emotional condition and are sufficient to require the Office to undertake further development of appellant's claim.⁷

On remand, the Office should prepare a statement of accepted facts and refer appellant to an appropriate Board-certified specialist to determine whether there is a causal relationship between his accepted employment injury and his diagnosed emotional condition. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

The January 13, 2000 decision of the Office of Workers' Compensation Programs is affirmed regarding appellant's recurrence of total disability due to his left knee condition, it is set aside and remanded for further development of the issue of a consequential emotional condition. The December 16, 1999 decision is hereby affirmed.

Dated, Washington, DC
June 1, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁷ *John J. Carlone*, 41 ECAB 354, 358-60 (1989).